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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,788	12/12/2003	Tommy Rodrigues	FDN-2824 (17017)	3477

7590 09/22/2005

Attn: William J. Davis, Esq.  
GAF MATERIALS CORPORATION  
Legal Dept., Building No. 10  
1361 Alps Road  
Wayne, NJ 07470

EXAMINER

RUDDOCK, ULA CORINNA

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/734,788

Applicant(s)

RODRIGUES ET AL.

Examiner

Ula C. Ruddock

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 July 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.  
4a) Of the above claim(s) 15-21 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-14 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. The Examiner has carefully considered Applicant's amendment and accompanying response filed July 1, 2005. The objections to the claims have been overcome. Also, the rejections in view of Pinault et al. (US 2002/0160151) and Tajima et al. (US 4,636,414) have been overcome. However, the rejection in view of Miller et al (US 2002/0110679) has been maintained.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 102***

3. Claims 1-4, 6, 7, and 9-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Miller et al. (US 2002/0110679). Miller et al. disclose a storm proof asphalt-based roofing material includes a substrate coated with an asphalt coating, a protective coating, a layer of granules, and a web bonded to the lower region of the asphalt coating (abstract). The substrate is a nonwoven web of glass fibers [0036]. An asphalt coating is applied to the nonwoven web of glass fibers [0038]. The web is then coated with granules [0040]. The protective coating is applied as a film [0041] and can function as an adhesive. The adhesive can include any type of thermoplastic, thermoset, or asphalt-based adhesive. Some examples include polyamide, rubbers, polyesters, polyurethanes, and siloxanes 0052]. The film can also be polyvinyl chloride [0070]. Regarding claims 6 and 11, it should be noted that because the Miller reference discloses the same materials as Applicant, the thermoplastic film will have a melting point higher than the melting temperatures of the asphalt coating said substrate or the thermosetting film will have a decomposition temperature higher than the melting temperature of the asphalt coating said substrate.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al. (US 2002/0110679), as shown above, in view of Tajima et al. (US 4,636,414). Miller et al. disclose the claimed invention except for the teaching that the organic film is a rubber polymer modified asphalt.

Tajima et al. (US 4,636,414) disclose a laminate bituminous roofing membrane. The membrane includes a fibrous sheet, a first bituminous layer laminated on one surface of the fibrous sheet, the bituminous layer being composed of bitumen or a bituminous mixtures, a synthetic resin sheet or film laminated on the other surface, and a mineral aggregate layer deposited on the surface (abstract). The fibrous sheets can be nonwoven glass fabrics and are impregnated with bitumen or a bituminous mixture (col 3, ln 50-62). The resin sheets include polyvinyl chloride or polyester (col 3, ln 63-68 to col 4, ln 1-3). The bituminous layers can be rubber modified bitumen (col 4, ln 19-29). The laminated bituminous roofing membranes can be applied or bonded to a substrate by using adhesives such as rubber-modified bitumen (col 5, ln 43-57). It would have been obvious to one having ordinary skill in the art to have used Tajima's rubber modified bitumen in place of the film layer of Miller et al., motivated by the desire to create a laminate having increased lamination strength.

6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al. (US 2002/0110679), as shown above.

Miller et al. disclose the claimed invention except for the teaching that the polyester film is specifically a polyethylene terephthalate film. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used polyethylene terephthalate as the polyester film in the Miller et al. roofing material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. In the present invention, one would have used polyethylene terephthalate, motivated by the desire to create a roofing material that high strength and increased abrasion resistance.

### ***Response to Arguments***

7. Applicant's arguments filed July 1, 2005, have been fully considered but they are not persuasive for the reasons set forth. Applicant argues that Miller does not teach as shingle comprising a substrate having an exposed and unexposed surface and coated on both surface with asphalt and wherein the exposed surface is layered with granules and the unexposed surface includes an adhesive layer which is laminated to an organic film. Rather, Applicant argues, Miller teaches a protective coating on the upper surface of the asphalt coating and upon which granules are applied. This argument is not persuasive because Miller discloses a web that is adhesively bonded to the lower surface of the substrate [0057]. This web can be a film layer [0070]. Therefore, it is the Examiner's position that the Miller shingle comprises, in order, granules, an

asphalt saturated substrate, an adhesive layer, and a film layer. This shingle comprises the same components in the same order as required by Applicant. Therefore, the rejection is maintained.

### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C. Ruddock whose telephone number is 571-272-1481. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H. Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

UCR *UCR*

*Ula Ruddock*  
**Ula C. Ruddock**  
Primary Examiner  
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